

IN THE  
United States Court of Appeals for the Eighth Circuit

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STATE OF IOWA, ET AL.,

*Petitioners,*

v.

SECURITIES AND EXCHANGE COMMISSION,

*Respondent,*

DISTRICT OF COLUMBIA, ET AL.,

*Intervenor-Respondents.*

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On Petitions for Review of an Order and Rule  
of the Securities and Exchange Commission

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**PETITIONERS' CONSOLIDATED RESPONSE TO  
RESPONDENT'S JULY 23, 2025 STATUS REPORT**

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August 25, 2025

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The Securities and Exchange Commission issued what is likely its most expensive rule of all time. Recognizing the strength of the challenge, SEC agreed to stay enforcement of the rule during the consolidated challenge, here. And intervenors joined to defend the rule in case SEC was not inclined to do so.

All parties agree that a decision now is not advisory, so this Court continues to have jurisdiction. And as SEC reports, this case presents an “important, live controversy of national policy with critical economic and policy ramifications.” Status Report of SEC (July 23, 2025) (“Status Report”), at 2, 4. The challenge to the Rule has been fully briefed since September 2024. The Court has what it needs to come to a decision. It should now proceed down that path. Until this Court acts, the parties face an impasse.

On April 24, 2025, this Court ordered Respondent SEC to answer: (1) “whether the Commission intends to review or reconsider the rules at issue”; (2) if not, “whether the Commission will adhere to the rules if the

petitions for review are denied”; and (3) if not, “why the Commission will not review or reconsider the rules at this time.”

On July 23, SEC said it “does not intend to review or reconsider the Rules at this time” because “the Court’s decision on the legal issues in the case would help determine the scope and need for further rulemaking.” Status Report at 2, 4. SEC asked the Court to “terminate the abeyance, continue considering the parties’ arguments, and exercise its jurisdiction to decide the case” Status Report at 2.

Unsatisfied, Intervenor-States assert that SEC did not answer the Court’s questions. They ask for a continued abeyance “until SEC clearly indicates what it intends to do with the Rules.” Intervenor-States’ Response to SEC’s July 23 Status Report (“Intervenor-States’ Response”), at 2. Intervenor-States concede that once SEC answers the Court’s questions, then this Court could decide the case. Intervenor-States’ Response at 5 (There “is no reason for this Court to unnecessarily decide

this case in its current posture, at least not until SEC clarifies its responses to the Court’s still-unanswered questions.”).

But SEC was already clear: it will not reconsider the Rule prior to a decision from this Court. It is time for this Court to decide this case—and close the door on the Rule that exceeds SEC’s authority.

Intervenor-States concede this Court continues to have jurisdiction. Intervenor-States’ Response at 5–6. They do not argue the case is moot or lacks adversity. Instead, they argue a decision now would be advisory not “in a jurisdictional sense,” only in a “practical sense.” Intervenor-States’ Response at 5. But when agencies decline to defend a rule and intervenors take up the defense, courts rule on the petition for review. *See, e.g., Am. Pub. Gas Ass’n v. U.S. Dep’t of Energy*, 22 F.4th 1018, 1024 (D.C. Cir. 2022).

A live issue is whether SEC had statutory authority to issue the Rule. Petitioners believe the answer is clearly no. The parties briefed that issue. And as a statutory interpretation question, federal courts will have the final word. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412–413 (2024). This Court’s opinion will inform the next steps for all parties. And

it will do so without the need of starting over with a brand-new petition for judicial review raising similar statutory questions.

If Intervenor-States’ true guiding light were efficiency, then all parties would agree that this case should be decided now, not later. As Intervenor-States describe, “[a] decision invalidating the Rules in total would render it unnecessary for SEC to take any ‘next steps.’” Intervenor-States’ Response at 4. That is precisely what this Court should do.

The inefficient option here is to wait to leave a ripe, fully briefed case pending as the SEC files status reports every 60 days that (again) say it will not reconsider the Rule. Status Report at 2, 4. *See, e.g., Romy Hammes, Inc. v. Comm’r*, 68 T.C. 900, 911 (1977) (recognizing that “recurring and protracted litigation” on an issue produced “uncertainty [that] impairs mobility of capital, increases compliance costs, and imposes inequities”).

And only last year Intervenor-States reported that they would suffer “direct, tangible injuries” unless the Court “uph[eld] the Final Rule.” Mot. Int. Party Mass. *et al.*, at 12 (Apr. 3, 2024) (discussing “imminent risk of direct financial harm” depriving them of “significant economic benefits” if Rule not upheld). But this Court cannot uphold the

Rule—it cannot do anything—while the case sits in abeyance waiting for nothing to change.

Intervenor-Respondents intervened in this case to defend their interests and the Rule. They briefed the issues. And adversity remains across parties. This Court should proceed to final decision—including argument—and provide much-needed certainty to the nation’s economy and publicly listed companies.

August 25, 2025

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## CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g) and Local R. 25A, I certify the following:

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 802 words, excluding those parts exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and Fed. R. App. P. 32(a)(6) because the brief has been prepared in Century Schoolbook 14-point font using Microsoft Word for Microsoft Office 365.

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## CERTIFICATE OF SERVICE

I certify that the foregoing was filed with the Clerk using the appellate CM/ECF system on August 25, 2024. All counsel of record are registered CM/ECF users, and service will be accomplished by the CM/ECF system.

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